

Senate Bill 148

By: Senators Shafer of the 48th, Pearson of the 51st, Hamrick of the 30th, Hill of the 32nd,  
Wiles of the 37th and others

**AS PASSED**

**A BILL TO BE ENTITLED  
AN ACT**

1 To amend Title 43 of the Official Code of Georgia Annotated, relating to professions and  
2 business, so as to provide for review of existing regulatory entities to determine the need for  
3 change to their current regulations; to provide for the evaluation of the regulations of existing  
4 regulatory entities; to amend Chapter 4 of Title 50 of the Official Code of Georgia  
5 Annotated, relating to the organization of the executive branch generally, so as to establish  
6 the "Georgia Government Accountability Act"; to provide for the duties and responsibilities  
7 of the appropriations committees; to authorize the committees to review and evaluate state  
8 agencies' productivity, efficiency, and responsiveness; to provide for the automatic abolition  
9 of certain state agencies; to provide for exceptions; to provide for related matters; to repeal  
10 conflicting laws; and for other purposes.

11 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

12 **SECTION 1.**

13 Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses,  
14 is amended by revising Chapter 1A, relating to occupational regulation legislation review,  
15 as follows:

16 **"CHAPTER 1A**

17 **43-1A-1.**

18 This chapter shall be known and may be cited as the 'Georgia Occupational Regulation  
19 Review Law.'

43-1A-2.

The General Assembly finds that the need for and the effectiveness of establishing occupational licensure and certification in this state has not been systematically evaluated. It is the purpose of this chapter to ensure that no programs of licensure and certification shall hereafter be imposed upon any profession or business unless required for the safety and well-being of the citizens of ~~the~~ this state. It is the further purpose of this chapter to authorize the periodic review of existing regulatory entities to ensure that the authority of such regulatory entities is applicable and necessary with relation to the current professional and business conditions of this state. Any actions of the council pursuant to this chapter are solely recommendations and shall be nonbinding.

43-1A-3.

As used in this chapter, the term:

(1) 'Applicant group' means any business or professional group or organization, any individual, or any other interested party which proposes that any business or professional group not presently regulated be regulated by the state.

(2) 'Certificate' or 'certification' means a voluntary process by which a statutory regulatory entity grants recognition to an individual who has met certain prerequisite qualifications specified by that regulatory entity and who may assume or use 'certified' in the title or designation to perform prescribed occupational tasks.

(3) 'Council' means the Georgia Occupational Regulation Review Council.

(4) 'Grandfather clause' means a provision in a regulatory statute applicable to individuals engaged in the regulated business or profession prior to the effective date of the regulatory statute which exempts the individuals from meeting prerequisite qualifications set forth in the regulatory statute to perform prescribed occupational tasks.

(5) 'Legislative committee of reference' means the standing legislative committee designated by the Speaker of the House of Representatives or the President of the Senate to consider proposed legislation introduced in their respective houses of the General Assembly to regulate any business or occupation not previously regulated.

(6) 'License,' 'licensing,' or 'licensure' means authorization to engage in a business or profession which would otherwise be unlawful in the state in the absence of authorization. A license is granted to those individuals who meet prerequisite qualifications to perform prescribed business or professional tasks, who use a particular title, or who perform those tasks and use a particular title.

(7) 'Regulate' or 'regulation' means the process of licensure or certification as defined in this Code section.

(8) 'Regulatory entity' means any state agency which regulates one or more professions, occupations, industries, businesses, or other endeavors in this state.

(9) 'State agency' means each state board, bureau, commission, department, division, office, or other separate unit of state government created or established by law.

43-1A-4.

(a) There is created the Georgia Occupational Regulation Review Council.

(b) The council shall consist of ten members:

(1) The Comptroller General or his or her designee;

(2) The Secretary of State or his or her designee;

(3) The commissioner of human ~~resources or his designee~~ services, commissioner of community health, or the executive director of the Georgia Composite Medical Board or his or her designee, as deemed most appropriate by the chairperson of the council to address the issues raised by the prospective regulation of the applicant group;

(4) The director of the Office of Planning and Budget or his or her designee;

(5) The commissioner of natural resources or his or her designee;

(6) The state revenue commissioner or his or her designee;

(7) The Commissioner of Agriculture or his or her designee;

(8) The administrator of the 'Fair Business Practices Act of 1975' or his or her designee;

(9) The chairperson of the legislative committee of reference or that person's designee from that committee, but only when legislation referred by such committee is being considered by the council; and

(10) The chairperson of that standing committee of the General Assembly appointed by the presiding officer thereof pursuant to subsection (b) of Code Section 43-1A-5 or that chairperson's designee from that committee, but only when legislation of which that presiding officer was notified under subsection (b) of Code Section 43-1A-5 is being considered by the council.

(c) The director of the Office of Planning and Budget or his or her designee shall serve as chairperson of the council.

(d) Legislative members of the council appointed thereto pursuant to paragraphs (9) and (10) of subsection (b) of this Code section shall receive for their attendance of meetings of the council the same expense and mileage allowance authorized for legislative members of interim legislative committees.

43-1A-5.

(a) It shall be the duty of the council to:

89 (1) Review ~~review~~ all bills introduced in the General Assembly to license or certify a  
90 profession or business, which is not currently licensed or certified by the state, based on  
91 the criteria outlined in Code Section 43-1A-6; and

92 (2) Review each existing regulatory entity that is currently regulated pursuant to this title  
93 to determine the applicability and necessity of such regulatory entity's authority with  
94 relation to the current professional and business conditions of this state. The council shall  
95 conduct such review a minimum of once every seven years. All council meetings relating  
96 to a review of an existing regulatory entity pursuant to this paragraph shall be conducted  
97 in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

98 (b) The chairperson of the legislative committee of reference shall provide written  
99 notification to the council of any proposed legislation introduced in that house of the  
100 General Assembly of which that committee is a standing committee if that legislation  
101 provides for the licensure or certification of a business or profession not currently licensed  
102 or certified by the state. That chairperson at the same time shall provide written notification  
103 of that legislation to the presiding officer of the house of the General Assembly in which  
104 that legislation was not introduced, and that presiding officer shall then appoint the  
105 chairperson of a standing committee of that house to serve as a member of the council for  
106 the purpose of considering that legislation, except that the chairperson so appointed may  
107 instead designate another member of that standing committee to serve as a member of the  
108 council for that purpose. Within a period of time not to exceed nine months from the date  
109 of such notification to the council, but in no event later than the convening date of the next  
110 succeeding regular session of the General Assembly, the council shall provide a formal  
111 report evaluating the need to regulate the business or profession based on the factors and  
112 information provided under Code Section 43-1A-7 to the chairperson of the legislative  
113 committee of reference, the committee chairperson appointed to the council pursuant to  
114 paragraph (10) of subsection (b) of Code Section 43-1A-4, the presiding officers of the  
115 House of Representatives and the Senate, and the legislative counsel. If, subsequent to a  
116 review pursuant to paragraph (2) of subsection (a) of this Code section, the council  
117 concludes changes are needed to the regulations of an existing regulatory entity, or that a  
118 regulatory entity's existence is no longer necessary or in the interests of the state, a formal  
119 report recommending such changes shall be completed and distributed in the same manner  
120 described previously herein. If the council determines a need for regulation, the report  
121 shall recommend an appropriate type of regulation and an appropriate state agency to  
122 oversee the regulation.

123 (c) The council shall work with the applicant group, the legislative committee of reference,  
124 and other interested parties in formulating its formal report.

(d) The head of a regulatory entity subject to review pursuant to paragraph (2) of subsection (a) of this Code section shall have the right to testify to the council to contribute its perspective and recommendations regarding potential changes to how such regulatory entity is regulated.

43-1A-6.

All bills introduced in the General Assembly to newly regulate a profession or business ~~should~~ and all reviews of existing regulatory entities pursuant to paragraph (2) of subsection (a) of Code Section 43-1A-5 shall be reviewed according to the following criteria. In evaluating how or whether a profession or business shall hereafter be regulated, the following factors shall be considered:

(1) Whether the unregulated practice of ~~an~~ the occupation may harm or endanger the health, safety, and welfare of citizens of ~~the~~ this state and whether the potential for harm is recognizable and not remote;

(2) Whether the practice of ~~an~~ the occupation requires specialized skill or training and whether the public needs and will benefit by assurances of initial and continuing occupational ability;

(3) Whether the citizens of this state are or may be effectively protected by other means; ~~and~~

(4) Whether the overall cost effectiveness and economic impact would be positive for citizens of ~~the state~~ this state; and

(5) Whether there are means other than state regulation to protect the interests of the state.

43-1A-7.

~~After July 1, 1986, applicant~~ Applicant groups and other interested parties shall explain in writing each of the following factors to the extent requested by the council and the legislative committee of reference:

(1) A definition of the problem and why regulation is necessary:

(A) The nature of the potential harm to the public if the business or profession is not regulated, and the extent to which there is a threat to public health and safety; and

(B) The extent to which consumers need and will benefit from a method of regulation identifying competent individuals engaged in the business or profession;

(2) The efforts made to address the problem:

(A) Voluntary efforts, if any, by members of the business or profession to establish a code of ethics or help resolve disputes between the business or professional group and consumers; and

(B) Recourse to and the extent of use of applicable law and whether it could be strengthened to control the problem;

(3) The alternatives considered:

(A) Regulation of business or professional employers rather than employees;

(B) Regulation of the program or service rather than the individuals;

(C) Registration of all individuals;

(D) Certification of all individuals;

(E) Other alternatives;

(F) Why the use of the alternatives specified in this paragraph would not be adequate to protect the public interest; and

(G) Why licensure would serve to protect the public interest;

(4) The benefit to the public if regulation is granted:

(A) The extent to which the incidence of specific problems present in the unregulated business or profession can reasonably be expected to be reduced by regulation;

(B) Whether the public can identify qualified individuals;

(C) The extent to which the public can be confident that regulated individuals are competent:

(i) Whether the proposed regulatory entity would be a board composed of members of the profession and public members, or a state agency, or both and, if appropriate, their respective responsibilities in administering the system of certification or licensure, including the composition of the board; the powers and duties of the board or state agency regarding examinations, investigations, and the disciplining of certified or licensed individuals; the promulgation of rules and a code of ethics; and how fees would be levied and collected to cover the expenses of administering and operating the regulatory system;

(ii) If there is a grandfather clause, whether such individuals will be required to meet the prerequisite qualifications established by the regulatory entity at a later date;

(iii) The nature of the standards proposed for certification or licensure as compared with the standards of other jurisdictions;

(iv) Whether the regulatory entity would be authorized to enter into reciprocity agreements with other jurisdictions; and

(v) The nature and duration of any training and whether applicants will be required to pass an examination; and, if an examination is required, by whom it will be developed and how the cost of development will be met; and

(D) Assurance to the public that regulated individuals have maintained their competence:

(i) Whether the certification or license will carry an expiration date; and

(ii) Whether renewal will be based only upon payment of a fee or whether renewal will involve reexamination, satisfactory completion of continuing education, peer review, or other enforcement;

(5) The extent to which regulation might harm the public:

(A) The extent to which regulation might restrict entry into the business or profession and whether the proposed standards are more restrictive than necessary to ensure safe and effective performance; and

(B) Whether there are similar professions to that of the applicant group which should be included in, or portions of the applicant group which should be excluded from, the proposed legislation;

(6) A description of the group proposed for regulation, including a list of associations, organizations, and other groups representing the business or profession in this state, an estimate of the number of individuals in each group, and whether the groups represent different levels of business or professional activity;

(7) The expected cost of regulation:

(A) The impact regulation might have on the costs of service to the public;

(B) The impact regulation might have on various types of insurance; and

(C) The initial and long-term cost to the state and to the general public of implementing the proposed legislation; and

(8) Any additional information requested by the council or the legislative committee of reference.

43-1A-8.

(a) After evaluating the report of the council and any other desired information based on the criteria outlined in Code Section 43-1A-6 and considering governmental and societal costs and benefits, if the General Assembly finds that it is necessary to regulate a business or profession not previously regulated by law, the most appropriate alternative method of regulation should be implemented, consistent with the public interest and this Code section:

(1) Where the consumer may have a substantial basis for relying on the services of a profession or business, a system of certification should be implemented;

(2) Where apparent that adequate regulation cannot be achieved by means other than licensing, a system of licensing should be implemented; or

(3) Where regulation as defined in this chapter is deemed too restrictive and unnecessary to protect the public health and welfare, a less restrictive means of ensuring public protection, including, but not limited to, stricter civil action or criminal penalties, inspection requirements, or a system of registration, may be considered.

(b) With regard to an existing regulatory entity, after evaluating the report of the council and any other desired information based on the criteria outlined in Code Section 43-1A-6 and considering governmental and societal costs and benefits, the General Assembly shall:

(1) Take no action if it has determined that such existing regulatory agency is efficiently regulated and that no action is necessary in the interests of the state;

(2) Amend the enabling legislation of such existing regulatory entity if it has determined that making such amendments shall more efficiently regulate such regulatory entity in a manner that is in the best interests of the state; or

(3) Repeal the enabling legislation of such existing regulatory entity if it has determined that the continuing regulation of such regulatory entity is no longer in the interests of the state.

43-1A-9.

Nothing in this chapter shall be construed to limit the authority of the General Assembly to legislate as authorized by the Constitution."

## SECTION 2.

Chapter 4 of Title 50 of the Official Code of Georgia Annotated, relating to the organization of the executive branch generally, is amended by designating Code Sections 50-4-1 through 50-4-7 as Article 1 and by adding a new article to read as follows:

### "ARTICLE 2

50-4-20.

This article shall be known and may be cited as the 'Georgia Government Accountability Act.' It is the intent of the General Assembly to establish a method by which the efficiency of state government shall be reviewed and the productivity of each agency evaluated. This article is meant to ensure that the valuable resources of the state are best utilized and that state agencies are held accountable for their service to the public and responsiveness to the needs of the citizens of this state.

50-4-21.

(a) The Senate and House appropriations committees meeting jointly shall constitute the Legislative Sunset Committee.

(b) As used in this article, the term 'committee' means the Legislative Sunset Committee.

(c) In carrying out its function under this article, the committee may request, through the cochairpersons, the assistance of any state agency or office. When so requested, a state

agency and its personnel shall assist the committee and may be required to appear before the committee. The committee or its designated staff member may inspect, review, and copy the records, documents, and files of any state agency. All records, documents, and files requested by the committee shall be made available by the agency to the committee for review and copying within three business days.

50-4-22.

(a) The committee shall review all state agencies, including all boards, departments, advisory committees, authorities, bureaus, offices, and any other state entity of the executive branch of state government regardless of its designation. The committee shall be responsible for establishing a schedule for the routine review of all such state agencies. Each agency shall be scheduled for review a minimum of once every eight years. The committee shall have the discretion to add any agency to the review schedule or to modify an agency's scheduled review.

(b) Where a report of review issued by the committee under Code Section 50-4-24 finds that an agency should be automatically abolished as provided in this Code section, the report of review shall be filed by the committee with the Secretary of State, the Secretary of the Senate, and the Clerk of the House of Representatives. Where a report of review issued by the committee finds that an agency should be so abolished, the agency shall be abolished by operation of law on July 1 following the next regular session of the General Assembly which follows the filing of the report of review issued by the committee, unless the General Assembly by law continues the agency prior to that July 1. When an agency is so abolished, the general appropriations Act or amended general appropriations Act adopted at the regular session prior to the abolishment of the agency may designate the agency to which any assets and obligations of the abolished agency shall be transferred; and in the absence of such designation in an appropriations Act, the transfer shall be as directed by the Governor.

(c) Any agency established by constitutional provision shall not be subject to automatic abolishment as provided in subsection (b) of this Code section. Following the review and recommendations of the committee, the committee shall report to the General Assembly any recommended constitutional amendment needed for the reorganizing or abolishing of such constitutionally created agency.

(d) Except as may otherwise be expressly provided by law, abolishment of a state agency shall not affect the rights and duties that matured, penalties that were incurred, civil or criminal liabilities that arose, or proceedings that were begun before the abolishment.

298 50-4-23.

299 (a) Not later than 90 days following a request by the committee, an agency shall provide  
300 the committee with a report outlining the agency's efficiency and productivity and the  
301 extent to which the agency utilizes state resources to best meet the needs of the public.

302 (b) The report required by this Code section shall, at a minimum, include the following:

303 (1) A comprehensive list of state programs and services performed by the agency,  
304 including all special purpose activities undertaken to realize identifiable goals and  
305 objectives in order to achieve the agency's mission and legislative intent;

306 (2) An accounting of state resources spent by the agency;

307 (3) An explanation of factors that have contributed to any failure to achieve legislated  
308 standards or directives;

309 (4) The extent to which the agency has encouraged participation by the public in making  
310 its rules and decisions and the extent to which public participation has resulted in rules  
311 compatible with the objectives of the agency;

312 (5) A statement of any statutory objectives intended for each program and activity, the  
313 problem or need that the program and activity are intended to address, and the extent to  
314 which these objectives have been achieved;

315 (6) An assessment of the extent to which the jurisdiction of the agency and its programs  
316 overlap or duplicate those of other agencies and the extent to which those programs can  
317 be consolidated with those of other agencies;

318 (7) A self-examining assessment of the agency's efficiency and areas of needed  
319 improvement, including goals and objectives for improvement, and the means by which  
320 the agency intends to meet these goals and objectives;

321 (8) Recommendations for statutory or budgetary changes that would improve the  
322 agency's programs and operations, reduce costs, or improve services to state residents;

323 (9) The effect of federal intervention or loss of federal funds if the agency, or any of its  
324 programs or activities, is abolished;

325 (10) An assessment of alternative methods of providing services for which the agency  
326 is responsible which would reduce costs or improve performance while adequately  
327 protecting the public interest;

328 (11) A detailed summary of the agency's hiring and retention patterns for the previous  
329 five years;

330 (12) An assessment of the extent to which the agency has corrected any deficiencies and  
331 implemented recommendations contained in any state or federal audits or court decisions;

332 (13) A list of all advisory committees and boards, whether established in statute or by  
333 the agency; their purposes, activities, composition, and expenses; and an assessment of

the extent to which their purposes have been achieved and the rationale for continuing or eliminating each advisory committee or board;

(14) A list of agency programs or functions that are performed without specific statutory authority; and

(15) Other information as requested by the committee or any study committee created under the committee's direction.

(c) Information and data reported by the agency shall be validated by the agency's chief executive before submission to the committee.

50-4-24.

(a) No later than six months following the committee's request for a report from an agency pursuant to Code Section 50-4-23, the committee shall:

(1) Review the information submitted by or concerning the agency;

(2) Consult with or hear testimony from any individual, agency, private company, or other expert as needed;

(3) If the committee deems necessary, hold public hearings to consider this information as well as testimony; and

(4) Present a report of review on an agency reviewed by the committee. In the report of review, the committee shall include its specific findings and recommendations regarding each agency reviewed and indicate whether a public need exists for the continuation of an agency or for the functions of the agency.

By majority vote, the committee may extend the time provided for review of an agency if the committee determines that additional time for review is needed to adequately evaluate an agency.

(b) The committee shall consider the following criteria in determining whether a public need exists for the continuation of a state agency or agency function:

(1) The efficiency with which the agency operates;

(2) The statutory objectives of the agency and the problem or need that the agency is intended to address, the extent to which the objectives have been achieved, and any activities of the agency in addition to those granted by statute and the authority for these activities;

(3) An assessment of less restrictive or alternative methods of providing any regulatory function for which the agency is responsible while adequately protecting the public;

(4) The extent to which an advisory committee or board is needed or used;

(5) The extent to which the jurisdiction of the agency and the programs administered by the agency overlap or duplicate those of other agencies and the extent to which the

programs administered by the agency can be consolidated with the programs of other agencies;

(6) Whether the agency has recommended to the legislature statutory changes calculated to be of benefit to the public;

(7) The promptness and effectiveness with which the agency responds to the public's complaints and the extent to which the agency has encouraged participation by the public in making its rules and decisions;

(8) The extent to which the agency has satisfied requirements of state law, safeguarded public health, safety, and welfare, and utilized state resources;

(9) The extent to which the agency accurately reports performance measures used to justify state spending on each of its activities, services, and programs;

(10) The effect of probable federal intervention or loss of federal funds if the agency or an agency function is abolished; and

(11) The extent to which changes are necessary in the enabling statutes of the agency so that the agency can adequately comply with the criteria of this article.

(c) In its report of review, the committee may make a finding that the agency should be automatically abolished as provided in Code Section 50-4-22, in which case the provisions of that Code section shall apply.

(d) In the absence of a finding that the agency should be automatically abolished, the committee may make recommendations on the abolition, continuation, or reorganization of such agency and on the need for the continuation of the functions of such agency. The report of review may also make recommendations on the consolidation, transfer, or reorganization of an agency's programs when those programs are duplicated by another agency. It shall be the responsibility of the committee to prepare drafts of legislation necessary to carry out the committee's recommendations under this subsection.

50-4-25.

This article shall not apply to any commodity commission provided for by Chapter 8 of Title 2, the Georgia Seed Development Commission provided for by Chapter 4 of Title 2, or any cotton growers' organization certified for purposes of Article 5 of Chapter 7 of Title 2."

### **SECTION 3.**

All laws and parts of laws in conflict with this Act are repealed.